

November 2017



CONTENTS

INTRODUCTION	2
Objectives	2
Scope of market-led proposals included under the guideline	2
Exclusions from the guideline	3
The five stage assessment process	3
Governance and administering the guideline	5
High-value or high-risk assurance	6
Intellectual property	6
Proposal costs	7
Probity	7
Disclosure	8
Terms and conditions	8

PRE-SUBMISSION MEETING	9
Compulsory pre-submission meeting	9

1. STAGE ONE: PRELIMINARY ASSESSMENT	10
1.1 Submitting a proposal	10
1.2 Information required in a market-led proposal	10
1.3 Undertaking the preliminary assessment	11
1.4 Assessment decision	11
1.5 Assessment timeframe	11
1.6 Probity requirements	11
1.7 Disclosure	11

2. STAGE TWO: DUE DILIGENCE AND STRATEGIC ASSESSMENT	12
2.1 Information required in stage two	12
2.2 Undertaking due diligence and the strategic assessment	12
2.3 Stage two assessment criteria	13
2.4 Assessment decision	15
2.5 Additional uniqueness test	15
2.6 Procurement options in stage three	16
2.7 Preparation for stage three	16
2.8 Assessment timeframe	16
2.9 Probity requirements	17
2.10 Disclosure	17

3. STAGE THREE: PROCUREMENT PREPARATION	18
3.1 Information required in stage three	18
3.2 Undertaking procurement preparation	18
3.3 Key tasks to prepare for procurement	19
3.4 Assessment decision	22
3.5 Preparation for stage four	22
3.6 Assessment timeframe	23
3.7 Probity requirements	23
3.8 Disclosure	23
3.9 Intellectual property	23
3.10 Cost reimbursement	23

TREASURER'S FOREWORD



The Market-led Proposals Guideline provides a valuable opportunity for Government and the private sector to work together to meet Victoria's infrastructure and service needs. Since the introduction of the guideline in 2015, the Government has progressed a number of significant proposals that will provide benefit to Victorians.

The guideline outlines the process for parties seeking to approach Government with new and innovative proposals. Proposals must be in the public interest and will only proceed where they meet Government objectives, achieve value for money and are unique.

The guideline has been revised to provide better guidance to the private sector on how proposals will be considered, making it easier to do business and improve project outcomes. Market sounding has been introduced to allow Government to test the unique aspects of a proposal, if necessary. The probity and disclosure requirements have also been enhanced to ensure the framework upholds Government's commitment to the highest levels of transparency.

The Government continues to welcome market-led proposals and looks forward to working with the private sector to develop and implement proposals that meet the needs of a growing population and provide benefit to Victorians.

Tim Pallas, MP
Treasurer

4. STAGE FOUR: EXCLUSIVE NEGOTIATION OR LIMITED COMPETITIVE PROCESS	24
4.1 Information required in stage four	24
4.2 Undertaking negotiations and assessment of final offer	24
4.3 Value-for-money assessment	25
4.4 Assessment decision	27
4.5 Preparation for stage five	27
4.6 Assessment timeframe	27
4.7 Probity requirements	27
4.8 Disclosure	27
4.9 Intellectual property	27
4.10 Cost reimbursement	27
5. STAGE FIVE: CONTRACT AWARD	28
5.1 Contract award to private proponent	28
5.2 Governance requirements	28
5.3 Disclosure	28
APPENDIX 1: INNOVATIVE IDEAS	29
A1.1 Assessment of innovative ideas	29
A1.2 Information required in an innovative idea	29
A1.3 Undertaking the stage one assessment of an innovative idea	30
A1.4 Undertaking a stage two assessment of an idea	30
A1.5 Ex-gratia payment	31
A1.6 Intellectual property	31
APPENDIX 2: SUBMISSION CHECKLIST	32
APPENDIX 3: APPLICATION OF HVHR	34
APPENDIX 4: TERMS AND CONDITIONS	35
ADDITIONAL GUIDANCE MATERIAL	37

INTRODUCTION

Market-led proposals provide an opportunity for Victorians to benefit from private sector innovation in the delivery of both infrastructure projects and services. Proposals can drive economic growth, create jobs and new skills and help achieve better outcomes.

This Market-led Proposals Guideline (guideline) released in November 2017 updates the guideline released in November 2015. It reaffirms Government's commitment to a transparent process for considering whether market-led proposals are in the public interest, represent value for money and are consistent with Government policy and priorities. It also provides guidance on the assessment process for the private sector and government departments and agencies that assess proposals.

The guideline assists private proponents to identify key priority sectors where Government welcomes market-led proposals. It separately provides guidance regarding the process for assessing innovative ideas that have not been fully developed into a commercial proposition.

A new public exhibition process has been introduced to support decision making and confirm the uniqueness of a proposal. The guideline continues to emphasise that proposals will, wherever possible, incorporate competitive downstream tendering to ensure value-for-money outcomes and that a proponent's intellectual property will be appropriately treated.

Objectives

In implementing the guideline the Government's objectives are:

- (a) developing and implementing proposals from the private sector that provide benefit to Victorians;
- (b) driving economic growth and creating jobs and new skills in Victoria; and
- (c) ensuring a transparent and fair process while maintaining the highest level of probity and public accountability.

Scope of market-led proposals included under the guideline

This guideline defines a market-led proposal as one made by the private sector to government to build infrastructure and/or provide services. It originates within the private sector and involves proponents developing a project or service specification and then approaching Government for approval and support of the proposal.

While market-led proposals are covered under this guideline and are therefore separate from other government procurement practices, there are many complementary principles from the Government's Investment Lifecycle and High Value High Risk (HVHR) Guidelines and procurement practices that are relevant to these proposals.



Exclusions from the guideline

Types of proposals that will *generally* not be considered under the guideline include those that:

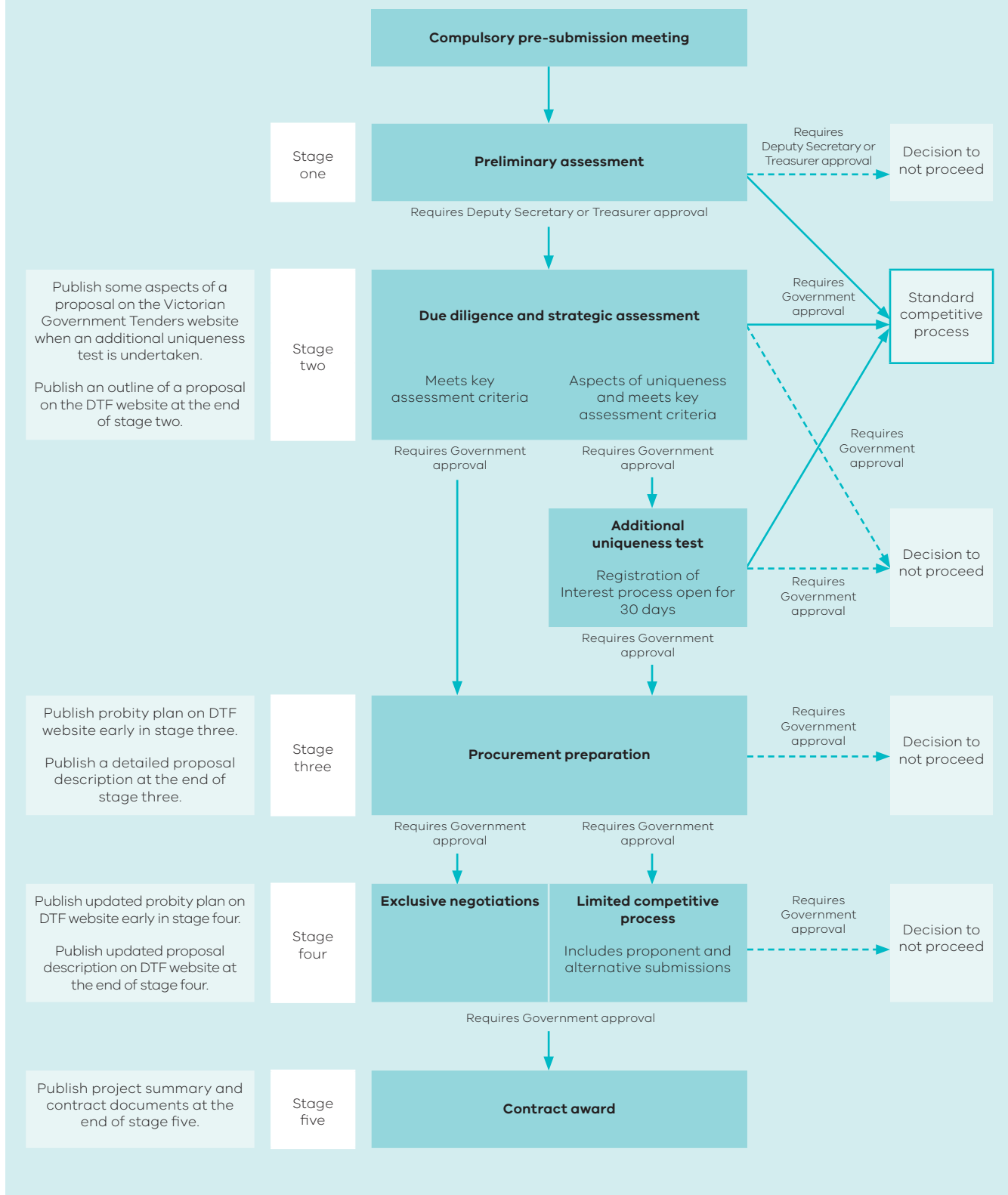
- cover procuring goods and services as detailed in Part 7A of the *Financial Management Act 1994*, including state purchase contracts, consultancy services, panel arrangements and standard tendering processes;
- seek to circumvent existing government approval processes;
- seek to obtain industry assistance and other grants currently available and considered through existing programs;
- relate to a project that Government has already decided and/or announced will be released to the market;
- have a combined scope, value and risk profile that does not warrant consideration in accordance with this framework; or
- seek to directly acquire, lease or licence a government land parcel or Crown Land without the proposal having unique characteristics supporting further consideration.

Types of proposals that *will not* be considered under the guideline are those that relate to social housing. Any such proposal should be directed to the Office of Housing to be considered through a separate process. Further information on the Office of Housing can be found at housing.vic.gov.au.

The five stage assessment process

The five stage process for assessing proposals is outlined in Diagram 1.

Diagram 1: Market-led proposal assessment process





Governance and administering the guideline

The Treasurer is the responsible Minister for the guideline.

At stage one, approval of the assessment outcome is required from the Deputy Secretary, Commercial Division, Department of Treasury and Finance (DTF), or the Treasurer.

Government approval of the assessment outcome is required at stage two and at each subsequent stage.

Governance

The Deputy Secretary, Commercial Division, DTF, receives all proposals.

DTF chairs an interdepartmental committee comprising representatives from the Department of Premier and Cabinet, the Department of Economic Development, Jobs, Transport and Resources (DEDJTR), and the Department of Environment, Land, Water and Planning. The interdepartmental committee oversees each stage of the assessment process unless otherwise agreed by Government.

A steering committee will be established if a proposal progresses to stage two. The steering committee will implement a governance plan outlining key roles and responsibilities. They will also oversee the assessment, due diligence and negotiation processes for the relevant proposal, and make recommendations to the interdepartmental committee and Government.

DTF will chair the steering committee in stage two. In stages three, four and five the steering committee will be chaired by a representative from the Government-approved lead department, which could be DTF or the relevant department or agency. DTF will be represented on the steering committee for all proposals.

A Senior Responsible Owner (SRO) for the project will also be nominated in stage three. The SRO should be a senior official of the lead department and a member of the steering committee. The SRO will ensure senior executives and relevant Ministers of the lead department are briefed throughout the assessment process.

Assessment

DTF is the primary contact for pre-submission meetings. DTF will lead the assessment of proposals, in consultation with relevant departments and agencies, for stages one and two.

During stage three, four and five the assessment will be undertaken by the Government-approved lead department, which could be DTF or the relevant department or agency. Where the assessment is led by the relevant department or agency this will be in consultation with DTF. DTF will brief the Treasurer throughout stages three, four and five.

Departments will work collaboratively to conduct due diligence and assess proposals.

The governance and assessment of proposals is outlined in Diagram 2.

Diagram 2 : Governance of market-led proposal assessment process



HVHR assurance

Government will determine whether a project is subject to the HVHR Project Assurance Framework at the end of stage two.

The HVHR assurance process aims to increase the likelihood that projects will be delivered on time and on budget by increasing central government oversight. While the process is designed for public sector business cases and projects, it is also relevant for market-led proposals.

Where a proposal is subject to HVHR assurance, the assessment of the proposal will incorporate HVHR and Gateway reviews, as detailed in a project specific Project Assurance Plan approved by Government at the end of stage two. The application of the HVHR assurance process is outlined in Appendix 3.

Intellectual property

Intellectual property (IP) is defined as inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks. It also includes trade secrets, proprietary know how and other confidential information to the extent they are protected against unlawful disclosure and use by government through common law or through additional contractual obligations such as confidentiality agreements.

The treatment of IP will be formalised if the proposal progresses to stage three. Where Government chooses not to proceed with a proposal past this stage and wishes to use IP, the proponent will be entitled to appropriate compensation subject to Government agreement. Any agreement relating to payment for IP will represent value for money and cover whether the proponent retains the right to use IP and the ability of government to own, transfer, licence or sub licence the IP, as required.



Proposal costs

The participation of a proponent in any stage of a market-led proposal process or in relation to any matter concerning a proposal or an idea, is at the proponent's sole risk, cost and expense.

The public sector is responsible for the cost of assessing proposals and ideas.

The process for potential cost reimbursement to the proponent will be agreed during stage three. Cost reimbursement will be decided by the Government on a case by case basis.

Probity

Public sector probity requirements

Public officials will implement probity plans and ensure systems, policies and procedures are in place that maintain the integrity of the decision-making process.

Proposals and ideas will be assessed in accordance with DTF's Probity Plan for Stage One and Two Assessments during stage one and two.

A proposal specific probity plan will be implemented for each proposal progressing to stage three, and this plan will be updated in stage four, as necessary.

The probity plans aim to:

- ensure prescribed processes have been followed and adhered to;
- ensure the processes are equitable and conducted with integrity;
- ensure conformity to processes designed to achieve value for money;
- provide accountability;
- preserve public and proponent confidence in government processes; and
- ensure defensibility of decisions to potential legal challenge or other external scrutiny.

The probity plan is required to set out proposal governance and decision-making processes and aims to ensure:

- compliance with legal and policy requirements;
- fairness and impartiality;
- consistency and transparency of process;
- security and confidentiality;
- identification and declaration of conflicts of interest; and
- how compliance with the probity plan will be reviewed and assessed.

DTF will seek advice from a probity adviser for stage one and two assessments, as required. A proposal specific probity adviser will be appointed by the lead department for stages three and four.

Proponent probity requirements

Proponents are encouraged to meet with relevant departments and agencies prior to submitting a proposal or idea to gain an understanding of Government's service or project needs and budget capacity.

Proponents must declare any conflicts of interest when submitting a proposal to DTF. During the stage one assessment, proponents should not enter discussions with public officials from departments and agencies other than the nominated DTF officer, or discuss the proposal with any media organisations unless agreed with DTF.

If a proposal progresses to stage two, proponents are required to sign a formal commitment with respect to confidentiality, communication protocols and conflicts of interest.

Early in stage three, a probity and process deed will be agreed to guide interaction between public officials and proponents. A separate probity and process deed will guide negotiations in stage four. Proponents must also appoint a probity adviser in stages three and four to advise and represent the proponent in any probity issues that arise.

A proponent must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in any stage of the assessment process. The Government may disqualify a proposal from further consideration if it is determined a proponent has not complied with its probity requirements at any stage of the process.

Disclosure

Information about market-led proposals is available at dtf.vic.gov.au.

DTF is responsible for coordinating disclosure and advising the Treasurer when information is disclosed.

Proposal details will not be publicly disclosed in stage one, however, DTF reserves the right to disclose details of a proposal if a proponent has not complied with its probity requirements and the circumstances set out in Appendix 4.

All proposals will be publicly disclosed on the DTF website at the end of stage two. The name of the proponent, the proposal title, a proposal description and the reasons for proceeding or not proceeding will be provided. Where a proposal undertakes an additional uniqueness test, the desired outcomes and/or key elements the proposal is seeking to deliver will be disclosed on the Victorian Government Tenders website during stage two.

A detailed proposal description will be published on the DTF website at the end of stage three and updated in stage four as necessary. A project summary and contract will be published at stage five.

Proponents will be notified and consulted when any information is disclosed. The extent and timing of disclosure will depend on the nature of the proposal.

Terms and conditions

The Government may take into account any other factors it considers relevant to the assessment of a market-led proposal. General terms and conditions relating to the guideline are provided in Appendix 4 and apply notwithstanding anything to the contrary in the guideline.

PRE-SUBMISSION MEETING

PRIVATE PROPONENT ROLE

- Request a pre-submission meeting with DTF to understand the market-led proposal process and seek feedback on what is proposed.
- Provide an outline of a proposal or idea.

PUBLIC SECTOR ROLE

- DTF arranges a meeting and provides advice on the market-led proposal process.
- Other departments or agencies may attend this meeting as required.

Compulsory pre-submission meeting

Proponents are required to meet with DTF officers prior to submitting a proposal or innovative idea. Representatives of other government departments or agencies may attend this meeting as required.

The pre-submission meeting is an opportunity for proponents to understand how the proposal or idea should address the guideline criteria, in particular, how it demonstrates unique characteristics, meets the needs of Government and aligns with Government's policy objectives.

Prior to the pre-submission meeting, proponents are encouraged to review Government's priority areas for market-led proposals (available on the DTF website). Prior to the meeting, proponents should also prepare and submit a pre-submission meeting template outlining what is proposed.

At the pre-submission meeting, DTF officers may provide feedback on the type of information required in a proposal and whether a proposal is consistent with the guideline. DTF may also reference the priorities of the Government. The pre-submission template and the content of discussions will be kept confidential.

One pre-submission meeting will generally be held with a proponent, however, subsequent meetings may be held at the discretion of DTF. Regardless of the nature and extent of feedback provided by DTF in the pre-submission meeting, any decision to proceed with submitting a formal market-led proposal remains solely at the proponent's discretion, cost and risk.

Market-led proposals are one of a range of options for proponents to interact with Government. There are established channels through Invest Victoria and DEDJTR.

To request a pre-submission meeting, a copy of the pre-submission template or make enquiries regarding the market-led proposal process, please contact:

Market-led Proposals
Deputy Secretary, Commercial Division
Department of Treasury and Finance
Level 5, 1 Treasury Place
Melbourne VIC 3002
email: marketledproposals@dtf.vic.gov.au

Stage one

PRELIMINARY ASSESSMENT

PRIVATE PROPONENT ROLE

- Submit a well-developed proposal or innovative idea addressing the assessment criteria and requirements in the submission checklist.

PUBLIC SECTOR ROLE

- DTF determines whether the proposal has sufficient information and is within the scope of the guideline.
- DTF, in consultation with relevant departments and agencies, conducts a preliminary assessment against criteria to determine if the proposal proceeds to stage two.

1.1 Submitting a proposal

Stage one starts when a proponent formally submits a market-led proposal or innovative idea to DTF.

Well-developed proposals are assessed through a five-stage process outlined in the guideline.

Innovative ideas are assessed through a separate two-stage process outlined in Appendix 1.

All proposals and ideas should be submitted electronically to:

Market-led Proposals
Deputy Secretary, Commercial Division
Department of Treasury and Finance
Level 5, 1 Treasury Place
Melbourne VIC 3002
email: marketledproposals@dtf.vic.gov.au

1.2 Information required in a market-led proposal

It is important proposals make a case as to why they should be considered under the guideline instead of through standard procurement or other government processes.

Proposals are not expected to be developed to the same extent as a public sector business case at initial submission. Proponents need to judge the resources required to prepare a market-led proposal with sufficient information in order to demonstrate evidence against the assessment criteria. Proponents should consider any feedback provided by DTF during the pre-submission meeting regarding information to be included in a proposal.

If a proposal proceeds through subsequent assessment stages, further information is likely to be requested from the proponent as part of the due diligence and assessment process.

A submission checklist to assist in developing proposals can be found in Appendix 2. Proponents should also refer to the Government's Investment Lifecycle and HVHR Guidelines, in particular Stage 1: Conceptualise, Stage 2: Prove and the related Investment Logic Map. This guidance provides practical assistance to any party developing an investment project. It helps identify the service need, inform investment decisions, monitor project performance and track the benefits of investments. The Investment Lifecycle and HVHR Guidelines are available at dtf.vic.gov.au.

1.3 Undertaking the preliminary assessment

DTF will undertake the stage one assessment in consultation with relevant departments and agencies. Each proposal will be considered on the merit of the actual submission. Where a proponent has engaged with a department, agency or Minister, that engagement will not be considered as part of the assessment.

The stage one assessment considerations are outlined in Table 1.

Table 1: Stage one assessment considerations

1	Contains sufficient and relevant information to enable assessment.
2	Within the scope of the guideline as outlined in the Introduction.
3	If a same or similar proposal has been assessed previously through the guideline.
4	Has the potential to meet the assessment criteria: <ul style="list-style-type: none">(a) meets a service or project need aligned with Government policy objectives;(b) is affordable in the context of budget priorities;(c) represents value for money for Victorians;(d) has significant social, environmental, economic or financial benefits for Victorians;(e) is commercial, feasible and capable of being delivered; and(f) has unique characteristics resulting in outcomes that are not likely to be obtained using standard competitive processes within acceptable timeframes and therefore justifies exclusive negotiations with Government.

1.4 Assessment decision

The stage one assessment will be considered by the interdepartmental committee overseeing market-led proposals who may recommend to the Deputy Secretary, Commercial Division, DTF, or the Treasurer as appropriate, that the proposal:

- (a) proceed to a stage two assessment;
- (b) not proceed, but the proponent is referred outside of the guideline to another government process, or for consideration under a standard competitive process; or
- (c) not proceed.

1.5 Assessment timeframe

DTF will complete the stage one assessment as quickly as possible, but timeframes for assessment will vary depending on the nature of the proposal and the level of government analysis required.

DTF will advise proponents of the status of the stage one assessment within 30 days of receipt of the proposal. DTF will then provide a weekly status update until the stage one assessment is complete.

1.6 Probity requirements

The stage one assessment will be undertaken in accordance with DTF's Probity Plan for Stage One and Two Assessments.

1.7 Disclosure

The proposal will not be publicly disclosed in stage one, however, DTF reserves the right to disclose details of a proposal if a proponent has not complied with its probity requirements and the circumstances set out in Appendix 4.

Proponents should be aware that details of the proposal will be publicly disclosed on the DTF website if a proposal progresses to stage two.

Stage two

DUE DILIGENCE AND STRATEGIC ASSESSMENT

PRIVATE PROPONENT ROLE

- Provide commitment in relation to probity requirements.
- No new submission is required.
- Option to give a presentation to DTF and relevant departments and agencies.
- Provide additional information if requested by DTF.

PUBLIC SECTOR ROLE

- DTF, in consultation with relevant departments and agencies, will undertake due diligence of the proposal.
- DTF, in consultation with relevant departments and agencies, will assess the proposal against the stage two assessment criteria.

2.1

Information required in stage two

At stage two, a new proposal is not required from the proponent. The strategic assessment will be based on the original proposal, however, DTF may request further information from the proponent to support decision making.

Each proponent will be invited to present its proposal to representatives from DTF and other relevant departments and agencies, as appropriate. This is optional and would be organised early in stage two.

2.2

Undertaking due diligence and the strategic assessment

DTF, supported by relevant departments and agencies, will perform due diligence to verify key elements of the proposal and to provide additional evidence to support decision making. The extent of the due diligence during stage two will depend on the nature of the proposal and whether the information in the proposal is sufficient to fully inform and support the stage two assessment.

DTF will interact with proponents through an open discussion process. DTF may request information that supports a proposal such as modelling or reports, and may also undertake workshops with a proponent to clarify aspects of its proposal. DTF may commission independent advice to support these activities.

DTF, supported by relevant departments and agencies, will then undertake an assessment of the proposal against the stage two assessment criteria outlined in Table 2.

The due diligence and strategic assessment will be overseen by the steering committee. The steering committee will make a recommendation to the interdepartmental committee overseeing market-led proposals as to whether the proposal should progress to stage three or if an additional uniqueness test is required. The steering committee will identify if any further due diligence is required where a proposal is recommended to progress to stage three.

2.3

Stage two assessment criteria

Proposals will be assessed against the stage two assessment criteria outlined in Table 2.

Table 2: Stage two assessment criteria	
(a) Meets a service or project need aligned with Government policy objectives	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • Does the proposal address a clear service or project need? • Are there other options for addressing the stated need? • Does the proposal align with Government policy e.g. Government's key priorities for market-led proposals, departmental policy statements i.e. planning policies, Budget papers? • Is the proposal, or a similar proposal, being considered currently as part of government processes? • Is the proposal consistent with Government's desired timeframes? • Are there key dependencies in the proposal?
(b) Proposal has potential to be affordable in the context of budget priorities	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • Is any Government funding required to support the proposal? • Is the proposed funding affordable given competing Government budget priorities? • Are there realistic, credible alternative funding sources? • Are there direct or indirect costs or risks inhibiting the proposal proceeding?
(c) Has the potential to represent value-for-money for Victorians	<p>The value for money assessment includes both quantitative and qualitative considerations and is informed by multiple factors including benefits, scope, timelines and risk allocation.</p> <p>The assessment will also consider how reasonable the cost estimates are to achieve the proposed benefits given the available information.</p>
(d) Has significant social, environmental, economic or financial benefits for Victorians	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • What are the benefits of what is being proposed and are they adequately defined? • Are the benefits of value to government? • Are there key innovations the proposal is offering e.g. commercial structure, design, idea, IP, technology? • Are there critical dependencies for achieving the benefits? • Are there other options for Government to achieve the benefits? • Are the benefits likely to be achieved and are there any risks to achieving them? • Have the benefits for key stakeholders been identified?

Table 2: Stage two assessment criteria

(e) Is commercial, feasible and capable of being delivered	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • Is there a clear commercial proposition? • Is there evidence of capability to deliver what is proposed financially? • Is there evidence of capability to deliver what is proposed technically? • Is there evidence to support delivery in the proposed timeframes?
(f) Has unique characteristics resulting in outcomes that are not likely to be obtained using standard competitive processes within acceptable timeframes and therefore justifies exclusive negotiations with Government	<p>Uniqueness is a key criterion that must be satisfied for a market-led proposal to proceed. Assessing uniqueness will depend on the nature of the proposal and the combination of characteristics presented. A proposal may not meet all of the uniqueness characteristics but may be assessed as unique when considered holistically.</p> <p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • Are unique characteristics present? <ul style="list-style-type: none"> - Does the proposal include a unique idea? - Does the proponent hold a unique position through ownership of, or access to, strategic assets e.g. rights under an existing contract, land, technology, software, IP? - Are any of the strategic assets still being developed or negotiated? - Are the unique characteristics material to achieving the desired outcome? • Does the proposal provide value to government compared with alternatives? <ul style="list-style-type: none"> - Does it improve value for money? - Does it provide other value that would not otherwise be achieved i.e. service delivery, risks not borne by government or other advantages? - Are timeframes for delivery improved? • Would the proposal result in outcomes not likely to be obtained within acceptable timeframes using standard competitive processes? • Are there any other factors considered material to demonstrate a unique position?



2.4 Assessment decision

The stage two assessment will be considered by the interdepartmental committee overseeing market-led proposals who may recommend to Government that the proposal:

- (a) meets the stage two assessment criteria and should proceed to stage three preparation for exclusive negotiations;
- (b) meets the stage two assessment criteria but requires confirmation of uniqueness and should undertake an additional uniqueness test;
- (c) not proceed, but the proponent is referred outside of the guideline for consideration under a standard competitive process; or
- (d) not proceed as it does not meet the stage two assessment criteria.

2.5 Additional uniqueness test

Where a proposal has been assessed to meet the stage two assessment criteria but uniqueness cannot be fully determined, Government may choose to undertake an additional uniqueness test. This test would assist Government to determine if any other parties could deliver similar outcomes, within similar timeframes and offer comparable value as to what has been proposed.

The additional uniqueness test will involve public exhibition of the proposed outcomes and/or key elements that a proposal is seeking to deliver. Public exhibition will take place through a Registration of Interest (RoI) advertised on the Victorian Government Tenders website. The proponent will be consulted on any information relating to its proposal that is disclosed through the RoI process.

The RoI will generally be open for a period of 30 days but this timeframe may be extended, depending on the nature of the proposal. Interested respondents will need to formally register to participate and DTF may engage with respondents to clarify aspects of their response.

At the conclusion of the RoI process the steering committee will consider any responses and update the assessment outcome, where necessary. The updated assessment will be considered by the interdepartmental committee overseeing market-led proposals who may recommend to Government that the original proposal:

- (a) meets the stage two assessment criteria and should proceed to stage three preparation for exclusive negotiations;
- (b) meets the stage two assessment criteria except uniqueness but proceed to stage three through a limited competitive process together with one or more respondents to the RoI;
- (c) not proceed, but the proponent is referred outside of the guideline for consideration under a standard competitive process; or
- (d) not proceed.

2.6 **Procurement options in stage three**

2.6.1 Exclusive negotiations

Exclusive negotiations involve the proponent and the Government entering into a formal negotiation period to develop a full proposal for Government consideration. The particular process under which exclusive negotiation with a proponent takes place will be determined on a case by case basis and will depend on the nature of each proposal.

2.6.2 Limited competitive process

A limited competitive process will involve the original proponent and one or more respondent(s) to the RoI process. The particular process under which the limited competitive process takes place will be determined on a case by case basis and will depend on the nature of the original proposal and the responses to the RoI process.

2.6.3 Standard competitive process

Where Government decides to pursue the proposal under a standard competitive process, this would be outside of the framework of this guideline and in accordance with relevant government purchasing and procurement policies.

The Government may also direct departments or agencies to investigate and consider standard competitive processes for projects that have attracted multiple market-led proposals that are aligned with key Government priorities and for which a full competitive market exists.

2.7 **Preparation for stage three**

If a proposal is recommended to proceed to stage three, the following will be prepared by DTF for Government's approval as part of the stage two assessment:

- identification of any further due diligence to be undertaken in stage three;
- identification of key stakeholders to be consulted in later stages;
- HVHR assessment, including a Project Assurance Plan (if applicable);
- Stage Three Governance Plan, which nominates the lead department and the SRO; and
- Stage Three Probity Plan.

2.8 **Assessment timeframe**

The stage two assessment typically takes up to four months when no additional uniqueness test is required. The stage two assessment period will be extended where an additional uniqueness test is undertaken. Timeframes for assessments will vary depending on whether further information is required as part of the assessment, the timeliness of proponent responses and the level of government analysis required.

DTF will provide a status update on a monthly basis until the stage two assessment is complete.



2.9

Probity requirements

The proposal will be assessed in accordance with DTF's Probity Plan for Stage One and Two Assessments.

Proponents are required to sign a formal commitment at the commencement of stage two relating to confidentiality, communication protocols and conflict of interest.

2.10

Disclosure

All proposals will be publicly disclosed on the DTF website at the end of stage two. The proposal title, the name of the proponent, a proposal description and the reasons for progressing or not progressing will be provided.

Where a proposal undertakes an additional uniqueness test, the proposed outcomes and/or key elements that a proposal is seeking to deliver will be disclosed on the Victorian Government Tenders website. The proponent will be consulted on the information that is disclosed through the RoI process.

Stage three

PROCUREMENT PREPARATION

PRIVATE PROPONENT ROLE

- Provide additional information on the proposal if requested by the lead department.
- Agree the terms of exclusive negotiation or the approach to a limited competitive process.

PUBLIC SECTOR ROLE

- Lead department to undertake assessment, in consultation with DTF, from stage three onwards.
- Undertake further due diligence and consider funding availability, where necessary.
- Agree either the terms of exclusive negotiation or the approach to a limited competitive process.

3.1

Information required in stage three

A new proposal is not required from the proponent at the commencement of stage three. The lead department may request further information from the proponent in order to undertake further due diligence and to assist in the preparation of exclusive negotiations or a limited competitive process.

3.2

Undertaking procurement preparation

The lead department, in consultation with DTF, will prepare for procurement by implementing governance and probity arrangements, undertaking further due diligence and confirming funding availability, where necessary. The lead department will take into account information received during any RoI process that may have been undertaken in stage two.

The lead department and proponent will agree either the terms of exclusive negotiation or the approach to a limited competitive process.

The lead department may commission independent advice to support decision making.

The lead department, in consultation with DTF, will make an assessment of the proposal against the following stage three assessment criteria:

- is affordable in the context of budget priorities;
- is likely to provide value for money;
- provides the expected benefits to government as detailed in stage two; and
- has not changed in scope or composition to the extent that the approval to progress as a market-led proposal process is compromised.

The lead department will also consider if the proposal has the potential to meet broader policy obligations including the Victorian Industry Participation Policy (VIPPP) and has incorporated any relevant feedback from stakeholders.

Stage three will be overseen by a steering committee chaired by the lead department. The steering committee will make a recommendation to the interdepartmental committee overseeing market-led proposals as to whether the proposal should progress to stage four.

3.3 Key tasks to prepare for procurement

The tasks to be completed to prepare for procurement are outlined in Table 3.

Table 3 : Key tasks to prepare for procurement

- Implementing the Stage Three Governance Plan
- Implementing the Stage Three Probity Plan
- Undertaking further due diligence, where necessary
- Considering funding availability, where necessary
- Considering value for money
- Developing detailed stakeholder engagement plan
- Considering application of other relevant Government policies
- Agreeing Stage Three Probity and Process Deed with the proponent
- Agreeing Stage Four Probity and Process Deed with the proponent to guide exclusive negotiations or prepare tender documentation for a limited competitive process

3.3.1 Implementing governance plan

The lead department will implement the Stage Three Governance Plan, including the steering committee and related structures, as approved by Government at the end of stage two.

3.3.2 Implementing probity plan

The lead department will implement the Stage Three Probity Plan, as approved by Government at the end of stage two.

3.3.3 Undertaking further due diligence

The lead department will undertake further due diligence as required by Government at the end of stage two. The proponent is to provide additional information if requested by the lead department.

3.3.4 Considering funding availability

The lead department will seek approval from Government for a funding allocation for the proposal, where necessary, and this will be considered in the context of existing budget priorities.

The level of detail required to support the funding request will vary depending on the nature of the proposal. The lead department may develop an interim business case to inform decision making that could outline other options for financing, funding and scope to achieve similar benefits of what is proposed. At a minimum, where there is no budget funding for another option, the assessment will include a baseline against a 'do nothing' option.

In considering what other options are viable and credible, the Government will be mindful that the market-led proposal is in the nature of an 'offer'. Options that seek changes to the market-led proposal require both parties to acknowledge the risk that agreement might not be reached.

3.3.5 Considering value for money

The lead department may develop a public sector comparator to consider the value for money of a proposal. A public sector comparator will be developed where the scope of a proposal can be procured using traditional approaches, there is an equivalent reference project and budget funding is required. The public sector comparator estimates the hypothetical risk adjusted cost if a proposal were to be financed, owned and traditionally procured by government. The public sector comparator is developed with reference to the proposal's stated benefits, risk allocation and the most efficient form and means of traditional government procurement.

Where proposals cannot be procured using traditional approaches, do not have an equivalent reference project or budget funding is not required, a realistic alternative is to be developed by the lead department. The realistic alternative estimates the public sector costs to deliver the benefits of the proposal.

In stage four, the public sector comparator or realistic alternative will be finalised to take into account the outcome of exclusive negotiations or a limited competitive process.

3.3.6 Developing stakeholder engagement plan

The lead department will develop a detailed stakeholder plan. The plan should identify key impacts of the proposal on stakeholders, who is responsible for consultation and at what stage of the assessment process it will take place.

The steering committee is responsible for implementing the stakeholder engagement plan.

3.3.7 Applying other Government policies

The lead department will implement HVHR and Gateway reviews as detailed in the Project Assurance Plan approved by Government at the end of stage two.

Government will determine the applicability of other relevant policies e.g. the Value Capture and Creation Framework, VIPP and the Major Projects Skills Guarantee. The lead department should also have regard to other Government policy objectives and how they are incorporated into the development and assessment of the proposal e.g. Aboriginal employment targets and disability employment targets.

3.3.8 Agreeing stage three probity and process deed

The lead department and proponent/tender participants will agree the terms of a Stage Three Probity and Process Deed to guide interaction during this stage. A standard deed will be provided to proponents by the lead department at the commencement of stage three and the terms will be negotiated where reasonable. The deed will encourage an open discussion process and address the following areas:

- confidentiality and approval requirements;
- conflict of interest management arrangements;
- communication protocols;
- information requirements to undertake further due diligence, where necessary;
- processes for treatment of IP; and
- rights and obligations of each of the parties.

3.3.9 Agreeing stage four probity and process deed for exclusive negotiations

The lead department and proponent will agree and formalise the terms of stage four exclusive negotiations through a Stage Four Probity and Process Deed. The deed will be approved by Government and signed by both parties if the proposal progresses to stage four. The deed will encourage an open discussion process and address the following areas:

- information required from the proponent;
- process for development and submission of the proponent's final offer including:
 - interaction protocols;
 - the delivery by Government of any request for proposal;
 - key terms including those agreed and those to be negotiated in stage four;
 - commercial principles for the contractual arrangements of the proposal; and
 - draft contracts;
- how competition will be incorporated e.g. competitive tender for downstream procurement (construction and debt components) and the role of Government in these processes;
- agreement on key elements of the proposal that would not be subject to competition and a process for determining these project costs e.g. open book, benchmarking, independent valuation;
- the assessment criteria including a process for determining value for money;
- timeframes for completion of the negotiation;
- termination and exit arrangements;
- the extent and timing of any cost reimbursement;
- treatment of IP; and
- relevant aspects of the Stage Three Probity and Process Deed.

3.3.10 Prepare tender documentation for limited competitive process

The lead department will prepare tender documentation in accordance with relevant government purchasing and procurement policies where a limited competitive process is likely to be undertaken. Participants will be consulted throughout the process as necessary.

3.4 Assessment decision

The stage three assessment will be considered by the interdepartmental committee overseeing market-led proposals, who may recommend to Government that:

- (a) the proposal meets the stage three assessment criteria, that an acceptable Stage Four Probity and Process Deed has been agreed with the proponent and that the proposal should proceed to stage four through exclusive negotiations;
- (b) the proposal meets the stage three assessment criteria, that acceptable tender documentation has been developed and that the proposal should proceed to stage four as a limited competitive process; or
- (c) not proceed.

3.5 Preparation for stage four

If a proposal is recommended to proceed to stage four, Government will be presented with the agreed Stage Four Probity and Process Deed or tender documents to consider as part of the stage three assessment. This enables exclusive negotiations or a limited competitive process to commence in stage four, subject to Government's approval.

A decision to proceed to an exclusive negotiation or limited competitive process does not commit Government to enter into a contract with the proponent or tenderers. The Government will decide whether to enter into a contract with the proponent or tenderers after a full proposal is presented at the end of stage four.

The following documents will also be prepared by the lead department for Government's approval as part of the stage three assessment:

- Stage Four Governance Plan;
- Stage Four Probity and Process Deed; and
- Stage Four Stakeholder Engagement Plan.

3.6 Assessment timeframe

The stage three assessment timeframe will vary depending on the nature of the proposal and the level of government analysis required.

3.7 Probity requirements

The stage three assessment will be undertaken by the lead department, in consultation with DTF, in accordance with the Stage Three Probity Plan.

All interactions between the public sector and proponent will be in accordance with the Stage Three Probity and Process Deed.

3.8 Disclosure

The Stage Three Probity Plan will be publicly disclosed on the DTF website at the commencement of stage three.

A detailed proposal description will be publicly disclosed at the end of stage three. This will provide an overview of the proposal, the proposed scope and benefits and the reasons an exclusive negotiation or limited competitive process is being pursued. The content disclosed will take into account commercial considerations.

The Government will consult with the proponent on the content to be released and will not disclose content that poses a risk to the negotiation process, the competitive tender process or the IP of the proponent.

3.9 Intellectual property

Where Government chooses not to proceed with a proposal past this stage and wishes to use IP, the proponent will be entitled to appropriate compensation subject to Government agreement. Any agreement relating to payment for IP will represent value for money and cover whether the proponent retains the right to use IP and the ability of government to own, transfer, licence or sub licence the IP, as required.

3.10 Cost reimbursement

The process for potential cost reimbursement will be agreed through the Stage Three Probity and Process Deed.

Cost reimbursement will be decided by the Government on a case by case basis.

Stage four

EXCLUSIVE NEGOTIATION OR LIMITED COMPETITIVE PROCESS

PRIVATE PROPONENT ROLE

- Undertake negotiations with the lead department or participate in a limited competitive tender process.
- Submit a final offer to Government.

PUBLIC SECTOR ROLE:

- Build up necessary sections of the business case.
- Complete negotiations.
- Evaluate and benchmark final offer(s).
- Recommend to the Government whether a proposal should proceed to contract award.

4.1

Information required in stage four

The proponent should provide a final offer to the Government after negotiations or the limited competitive process concludes. The final offer should confirm the proposed scope, cost to government, risk allocation and benefits.

Exclusive negotiations will be based on the approved Stage Four Probity and Process Deed and a limited competitive process will be in accordance with the approved tender documents.

4.2

Undertaking negotiations and assessment of final offer

Stage four involves completing an exclusive negotiation or limited competitive process in order for the proponent to present a final offer for Government to consider.

The lead department, in consultation with DTF, may build up the necessary sections of the interim business case to sufficiently inform Government decision making. The lead department will participate in downstream competitive processes as agreed in the Stage Four Probity and Process Deed.

The lead department, in consultation with DTF, will then benchmark the final offer(s) and make an assessment against the following stage four assessment criteria:

- is affordable in the context of the previously considered budget allocation;
- represents value for money;
- provides the expected benefits to government as detailed in stage three and risks to achieving these benefits; and
- has not changed in scope or composition to the extent that the original approval to enter into a market-led proposal process is compromised.

The lead department will also consider if the proposal has met broader policy obligations and incorporated any relevant feedback from stakeholders.

Stage four will be overseen by a steering committee chaired by the lead department. The steering committee will make a recommendation to the interdepartmental committee overseeing market-led proposals as to whether the proposal should progress to stage five.

4.3 Value-for-money assessment

4.3.1 General

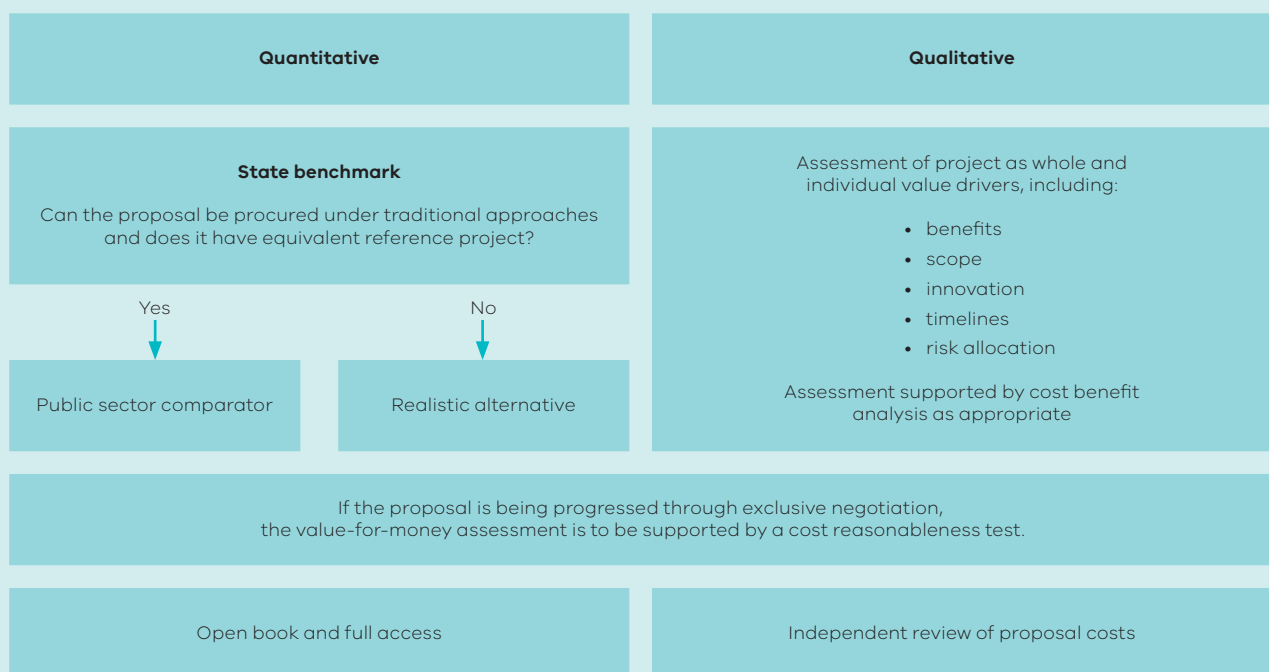
A value-for-money assessment is required for all market-led proposals whether an exclusive negotiation or limited competitive process is undertaken.

Value for money will be assessed in two parts:

- (a) a quantitative assessment of the proposal; and
- (b) a qualitative assessment of the value of the proposal.

The value-for-money test will be applied depending on the circumstances of the particular proposal. Diagram 3 outlines the value-for-money assessment.

Diagram 3: Value-for-money assessments



STAGE FOUR

EXCLUSIVE NEGOTIATION OR LIMITED COMPETITIVE PROCESS

4.3.2 Quantitative assessments

The public sector comparator or the realistic alternative estimate will be finalised to take into account the outcome of exclusive negotiations or a limited competitive process.

4.3.3 Qualitative assessments

All proposals will be qualitatively assessed. This will include the:

- proposal as a whole, including benefits; and
- commercial principles underpinning the proposal, including risk allocation.

A cost-benefit analysis may also be undertaken by the lead department where appropriate to support this qualitative assessment. This evaluates the costs and benefits (including both market and non-market impacts) of the proposal in today's dollars to society as a whole. The estimated net benefits (total benefits minus total costs), and any significant impacts that cannot be valued, will be used to help assess the proposal's value-for-money proposition. Risks to achieving these benefits should be documented.

4.3.4 Additional requirements for exclusive negotiation

If the proposal is being procured through exclusive negotiations the value-for-money assessment should also be supported by tests to ensure the proposal's costs are reasonable, including, where appropriate:

- appointing an independent third party to review and verify the proposal's costs; and
- requiring proponents give the lead department open book and full access to all documentation and pricing information in order for the lead department to assess the proposal.

These additional requirements will generally not be required when running a limited competitive process.



4.4 Assessment decision

The stage four assessment will be considered by the interdepartmental committee overseeing market-led proposals who may recommend to Government that the proposal:

- (a) meets the stage four assessment criteria and should proceed to stage five contract award; or
- (b) not proceed.

4.5 Preparation for stage five

A project governance plan to guide the project delivery phase will be considered as part of Government's consideration of the stage four assessment.

4.6 Assessment timeframe

The stage four assessment timeframe will vary depending on the nature of the proposal and the level of government analysis required.

4.7 Probity requirements

The stage four assessment will be undertaken by the lead department, in consultation with DTF, in accordance with the Stage Four Probity Plan.

All interactions between the public sector and proponent will be in accordance with the Stage Four Probity and Process Deed or the terms and conditions of the limited competitive tender process.

4.8 Disclosure

The Stage Four Probity Plan will be publicly disclosed on the DTF website at the commencement of stage four.

The previously disclosed detailed proposal description will be updated at the conclusion of stage four. The Government will consult with the proponent on the content to be released.

4.9 Intellectual property

Where Government chooses not to proceed with a proposal past this stage and wishes to use IP, the proponent will be entitled to appropriate compensation subject to Government agreement. Any agreement relating to payment for IP will represent value for money and cover whether the proponent retains the right to use IP and the ability of government to own, transfer, licence or sub licence the IP, as required.

4.10 Cost reimbursement

The process for potential compensation will be agreed through the Stage Four Probity and Process Deed.

Cost reimbursement will be decided by the Government on a case by case basis.

Stage five

CONTRACT AWARD

PRIVATE PROPONENT ROLE

- Enter contract on agreed terms and conditions.

PUBLIC SECTOR ROLE

- Enter contract on agreed terms and conditions.

5.1 Contract award to private proponent

Stage five involves the proponent entering into binding contractual arrangements with the State.

Contract award is based on the final offer and the terms and conditions approved by Government at the end of stage four. Contract award approval may be subject to resolution of minor outstanding issues, in which case approval will be required from the Treasurer and relevant portfolio minister for contract execution to occur.

5.2 Governance requirements

Contract execution will be arranged by the lead department.

Project governance post contract award will be in accordance with the governance structure approved by Government as part of the stage four assessment consideration.

5.3 Disclosure

5.3.1 Project summary

A project summary will be prepared by the lead department, in consultation with DTF, and released within 60 days of contractual or financial close. The project summary will provide an overview of:

- Government's rationale for progressing the project as a market-led proposal;
- the assessment process;
- the financial impact and what value for money was achieved;
- a description of the stakeholder engagement plan; and
- an assessment of a project's compliance with its probity plan.

Content of the project summary is determined according to each project's circumstances and characteristics. A project summary template is available at dtf.vic.gov.au.

The Treasurer and the responsible portfolio minister must approve the project summary. The approved project summary will be publicly available on the DTF website.

5.3.2 Contract publishing

The executed contract must be published on the Victorian Government Tenders website within 60 days of contractual or financial close. The contract is to be published in full with limited exceptions from disclosure, guided by the criteria of the *Victorian Freedom of Information Act 1982* and taking into consideration any IP rights.

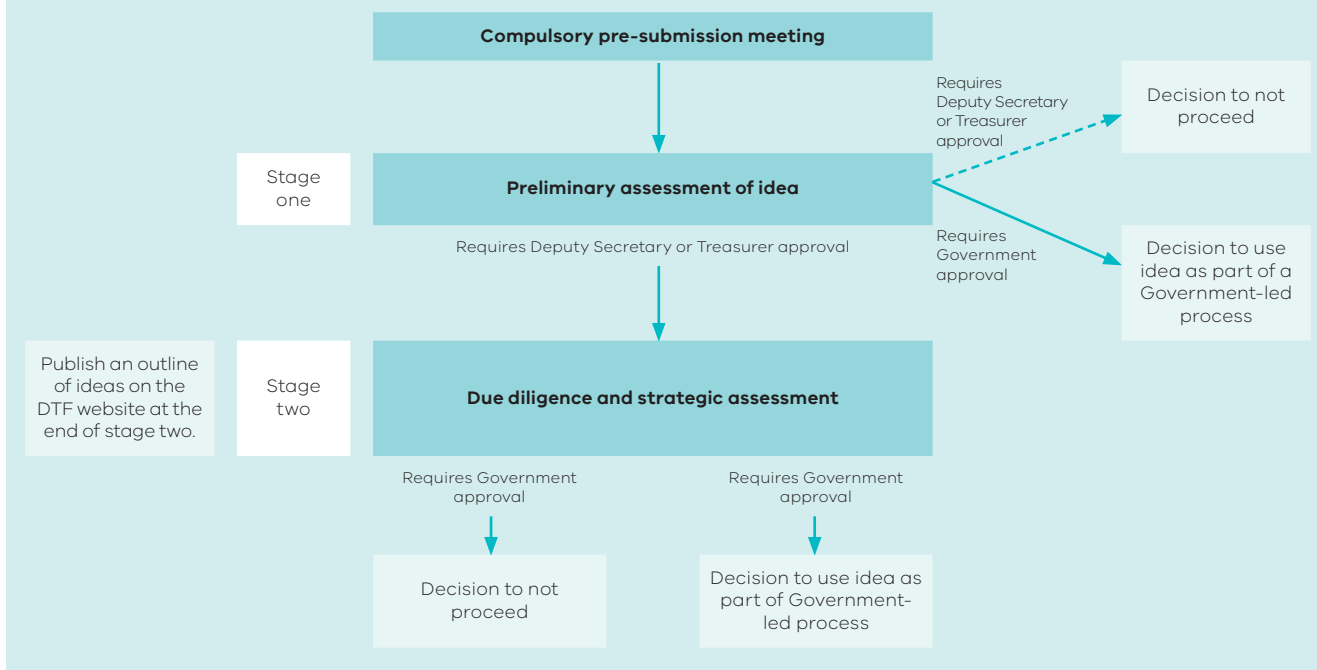
APPENDIX 1: INNOVATIVE IDEAS

A1.1

Assessment of innovative ideas

This appendix outlines a two-stage process for assessing ideas as outlined in Diagram 4.

Diagram 4: Market-led idea assessment process



A1.2

Information required in an innovative idea

Proponents may submit an idea that has value and benefit to Victorians but which the proponent does not intend to fully develop. An example is where a proponent may develop an innovative infrastructure solution but does not wish to finance or construct the project.

Ideas are not expected to be developed to the same extent as a proposal. Proponents need to judge the resources required to prepare an idea with sufficient information in order to demonstrate evidence against the assessment criteria. A submission checklist to assist in developing ideas can be found in Appendix 2.



A1.3 **Undertaking the stage one assessment of an innovative idea**

DTF will undertake the stage one assessment in consultation with relevant departments and agencies. Each idea will be considered on the merit of the actual submission. Where a proponent has engaged with a department, agency or Minister that engagement will not be considered as part of the assessment.

The stage one assessment considerations for an idea are outlined in Table 1, found in Section 1.3 of the guideline.

Proponents should be aware that the potential for uniqueness will be applied to both the design and concepts behind the idea and the anticipated outcomes and benefits of the idea. The assessment as to whether the idea is commercial, feasible and capable of being delivered will take into account that the idea is to be delivered by Government or the market, not the proponent.

A1.3.1 Assessment decision

The stage one assessment will be considered by the interdepartmental committee overseeing market-led proposals, who may recommend to the Deputy Secretary, Commercial Division, DTF, or the Treasurer as appropriate, that the idea:

- (a) proceeds to a stage two assessment;
- (b) be utilised as part of a Government-led process; or
- (c) not proceed.

Where it is recommended that the idea be utilised through a Government-led process, it may be recommended that the proponent has an ongoing role in project development. The type of role and level of involvement of the proponent will be at the discretion of Government.

A1.3.2 Assessment timeframe

DTF will complete the stage one assessment as quickly as possible but timeframes for assessment will vary depending on the nature of the idea and the level of government analysis required.

DTF will advise proponents of the status of the stage one assessment within 30 days of receipt of the idea. DTF will then provide a weekly status update until the stage one assessment is complete.

A1.3.3 Probity requirements

The stage one assessment will be undertaken in accordance with DTF's Probity Plan for Stage One and Two Assessments.

A1.3.4 Disclosure

No details of the idea will be publicly disclosed in stage one, however, DTF reserves the right to disclose details of a proposal if a proponent has not complied with its probity requirements and the circumstances set out in Appendix 4.

A1.4 **Undertaking a stage two assessment of an idea**

DTF will undertake the stage two assessment in consultation with relevant departments and agencies, as appropriate. In stage two, ideas will be assessed against the stage two, assessment criteria outlined in section 2.3, Table 2.

A1.4.1 Assessment decision

The stage two assessment of the idea will be considered by the interdepartmental committee who may recommend to Government that the idea:

- (a) meets the stage two assessment criteria and be utilised as part of a Government-led process; or
- (b) not proceed as it does not meet the stage two assessment criteria.

Where it is recommended that the idea be utilised through a Government-led process, it may be recommended that the proponent has an ongoing role in project development. The type of role and level of involvement of the proponent will be at the discretion of Government.

A1.4.2 Assessment timeframe

The stage two assessment typically takes up to two months. Timeframes for assessments will vary depending on whether further information is required as part of the assessment, the timeliness of proponent responses and the level of government analysis required.

DTF will provide a status update on a monthly basis until the stage two assessment is complete.

A1.4.3 Probity requirements

The idea will be assessed in accordance with DTF's Probity Plan for Stage One and Two Assessments.

Proponents are required to sign a formal commitment at the commencement of stage two relating to confidentiality, conflict of interest and communication protocols.

A1.4.4 Disclosure

All ideas will be publicly disclosed on the DTF website at the end of stage two. The title, the name of the proponent, a description of the idea and the reasons for progressing or not progressing will be provided.

A1.5 Ex gratia payment

Where the idea is utilised as part of a Government-led process the Treasurer may consider an ex gratia payment to compensate the originator of the innovative idea. This payment would reflect:

- (a) partial cost recovery for developing the innovative idea; and/or
- (b) partial compensation for the use of the idea by Government.

An ex gratia payment would be at the discretion of the Treasurer and would only be paid in the event that Government decides to utilise the idea following the successful completion of any competitive process.


A1.6 Intellectual property

Government will generally not seek to use IP incorporated in an idea if the idea does not progress beyond stage one or two.

If the idea is used by Government, any payment for IP would represent value for money and would be subject to agreement with the proponent, taking into account any ex gratia payment as appropriate. If an agreement cannot be reached, then Government will not use the IP as part of any subsequent Government-led process.

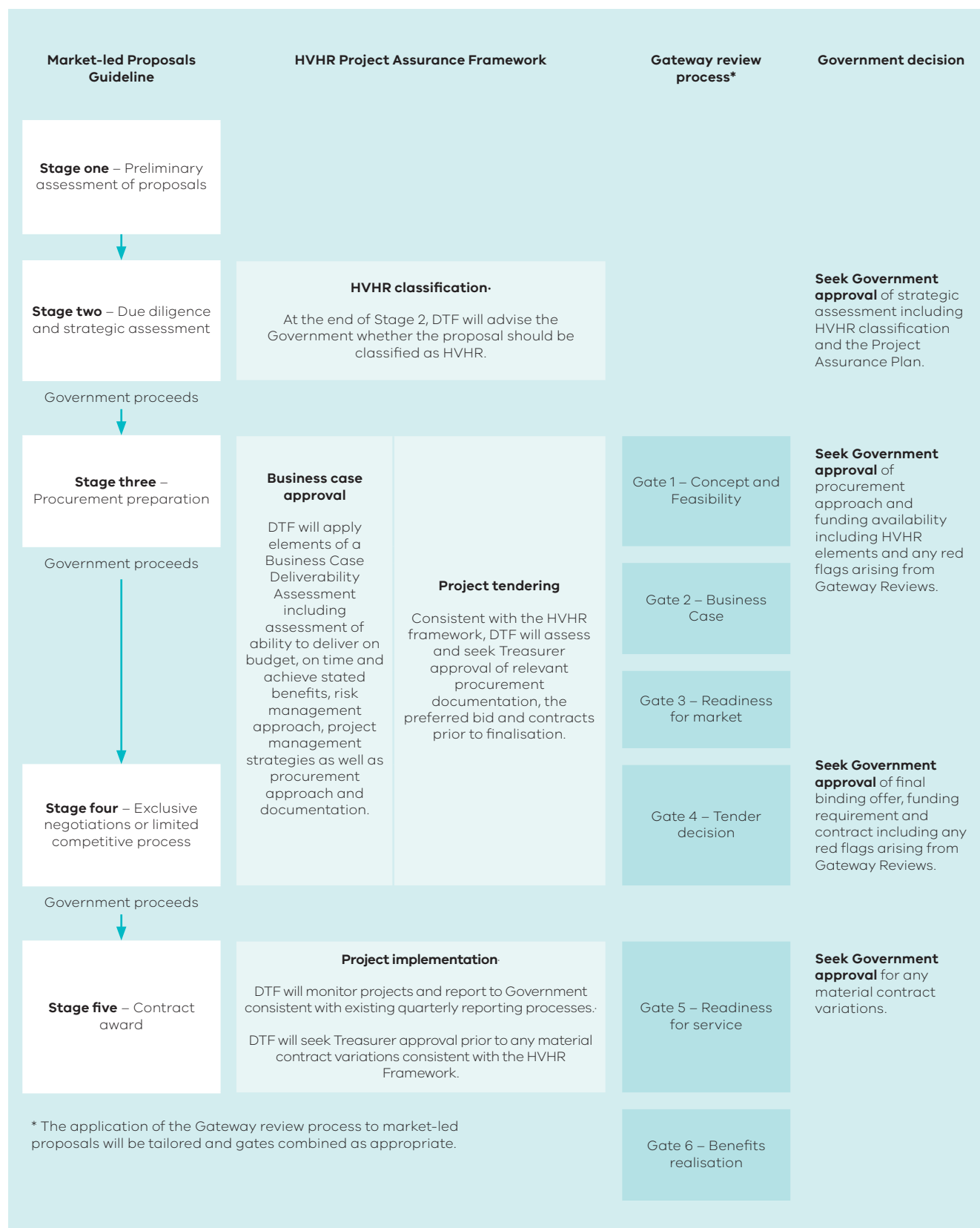
APPENDIX 2: SUBMISSION CHECKLIST

Type of information	Checklist	Proposal	Idea
Pre-submission meeting	Have you had a pre-submission meeting with DTF to discuss the guideline requirements?	✓	✓
Investment Lifecycle and HVHR Guidelines	Have you read these guidelines to help develop your proposal or idea?	✓	✓
Sufficient information	Does the proposal or idea contain sufficient information to be assessed?	✓	✓
Scope of guideline	Is the proposal or idea within the scope of the guideline?	✓	✓
Assessment criteria	<p>Have you addressed the key assessment criteria:</p> <ul style="list-style-type: none"> (a) meets a service or project need aligned with Government policy objectives; (b) is affordable in the context of budget priorities; (c) represents value for money for Victorians; (d) has significant social, environmental, economic or financial benefits for Victorians; (e) is commercial, feasible and capable of being delivered; and (f) has unique characteristics resulting in outcomes that are not likely to be obtained using standard competitive processes within acceptable timeframes and therefore justifies exclusive negotiations with Government. <p>In addressing the key assessment criteria, have you provided appropriate supporting information:</p> <ul style="list-style-type: none"> - An overview of the proposal or idea including a detailed description, objectives and intended outcomes? - Have you clearly articulated what support is being requested of government – financial, regulatory or other? - How the proposal or idea will be funded and evidence to support that approach? - Evidence of financial capacity where the proposal will be privately financed? - The commercial aspects including contractual/sub-contracting strategy and key risks and risk allocation? - How competition will be incorporated into the proposal through downstream tendering? - Evidence of capability to deliver what is proposed technically? - An outline of the proposed timelines and key milestones? 	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>



Type of information	Checklist	Proposal	Idea
Other information	<ul style="list-style-type: none"> - Have you indicated if this proposal or idea has been previously considered by Government? - Does the proposal or idea include details of consultation undertaken with key stakeholders? - Have you considered whether you should complete an Investment Logic Map? 	✓	✓
Declarations, disclosure and intellectual property	<ul style="list-style-type: none"> - Have you declared any potential or actual conflicts of interest, including all contact between proponents and the Government and/or the public officials in respect of the proposal or idea? - Have you acknowledged that some proposal or idea details will be published if the proposal progresses to stage two or before stage two if you do not comply with the probity requirements and the circumstances in Appendix 4? - Is there content that could not be publicly disclosed at stages two and three? - Have you clearly identified any parts of the proposal or idea considered as IP? - Has sign-off been provided from the appropriate senior representative of your organisation? 	✓	✓
Administrative	Have you clearly identified the name of the proponent and included contact details?	✓	✓

APPENDIX 3: APPLICATION OF HVHR PROJECT ASSURANCE FRAMEWORK



APPENDIX 4: TERMS AND CONDITIONS

References to the State

In this guideline a reference to the 'State' is a reference to the Crown in right of the State of Victoria.

Exclusion of process contracts

The guideline is not an offer document and is not intended to give rise to any contractual relationship. No binding contract (including without limitation a process contract) or other understanding (including without limitation any form of contractual, quasi-contractual, restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the State and a proponent in relation to the information provided during a market-led proposal process (including without limitation in the guideline). This paragraph does not apply to the requirements set out in the Introduction of the guideline, or to a process deed, probity deed or other written agreement (in each case) entered into by the proponent in relation to the guideline or its proposal as required by the State from time to time.

Broad reservation of rights

In addition to the other rights detailed in the guideline, without limiting its rights at law or otherwise but subject to any written agreement between the State and the proponent in relation to the proposal (including without limitation any probity deed or process deed referred to in the guideline), the State may (without limitation) at any stage of a market-led proposal process:

- (a) reject or refuse to consider, or to accept, any proposal that does not comply with the requirements of the guideline or which is otherwise incomplete;
- (b) suspend or terminate the market-led proposal process;
- (c) elect not to further consider any proposal that fails to satisfy the assessment criteria in the guideline or other relevant assessment criteria;
- (d) reject or accept any proposal;
- (e) accept or reject the whole or part of any proposal to the extent, in the case of part-acceptance, that part of the proposal is capable of such partial acceptance;
- (f) suspend or terminate a proponent's participation in the market-led proposal process if the State forms the view that the proponent has not complied with the guideline;
- (g) require, request, receive or accept (whether requested or not) additional information, material, clarification or explanation from a proponent relating to a proposal at any time and the State may, at its sole discretion, take such information, material, clarification or explanation into consideration in its assessment of a proposal;
- (h) consider and accept a proposal regardless of whether a proponent has not complied with the guideline;
- (i) amend, vary or supplement the guideline;
- (j) change the timing, order or application of any phase or process in the market-led proposal process or supplement, remove, add to or vary any part of the market-led proposal process;
- (k) accept or reject any clarification question or request for a meeting that is lodged by a proponent;
- (l) extend any time or date specified in the guideline;
- (m) negotiate with any proponent on any matter the State may determine;
- (n) suspend or terminate negotiations with any proponent;
- (o) allow any proponent to clarify, alter, amend, add to or change its proposal at any time;
- (p) in assessing any proposal, have regard to:
 - (i) the State's and its associates' knowledge and previous experience and dealings with any proponent or any of their respective associates; or
 - (ii) information concerning a proponent or any of their respective associates that is in the public domain or which is obtained by the State or its associates through its or their own investigations;

- (q) require the proponent to submit a best and final proposal;
- (r) not attribute any reasons for any actions or decisions taken, including without limitation in respect of the exercise of any or all of the above mentioned rights;
- (s) require the proponent or any associate of the proponent to enter into a probity and process deed with the State; or
- (t) otherwise take any such other action as it considers appropriate in relation to the market-led proposal process.

Exclusion of liability

To the extent permitted by law, neither the State nor its officers, employees or advisers will be liable to any proponent on the basis of any promissory estoppel, quantum meruit or on any other contractual or restitutionary ground or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a proponent's participation in a market-led proposal process, including without limitation instances where:

- (a) the State decides not to proceed with any or all parts of a proposal;
- (b) the State suspends or terminates a market-led proposal process; or
- (c) the State exercises or fails to exercise any of its other rights under or in relation to the guideline or a market-led proposal process (whether or not the State has informed a proponent of its exercise of the rights).

Decision making

The State has sole and absolute discretion in connection with any and all decisions or actions made or taken, refused to be made or taken, or required to be made or taken, by it in connection with the guideline or a market-led proposal process. The State has no liability to any proponent for any such decision, action or refusal.

Disclosure

Each of the State, the Government and DTF may disclose any information arising from or in connection with any proposal (including without limitation any confidential information) in the following circumstances:

- (a) where that information is required or authorised to be disclosed under any law or its disclosure is reasonably necessary for the enforcement of the criminal law;
- (b) to satisfy the disclosure requirements of the Victorian Auditor-General, to disclose that information to the ombudsman or for a purpose in relation to the protection of public revenue;
- (c) to any person for any purpose including (without limitation) to the extent the State, Government or DTF deems necessary for any purpose arising from or in connection with the proposal, the guidelines, maintaining confidence in or the integrity or the reputation of the market-led proposal process, the guideline, the State, Minister, Department or the Government or where a proponent or any officer, agent, adviser, consultant, representative, contractor or employee (Associate) of that proponent or any of their Associates has not complied with the guideline in relation to the relevant proposal;
- (d) to satisfy the requirements of Parliamentary accountability or to report to the Legislative Assembly or Legislative Council or any of its committees; or
- (e) if the disclosure is in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General.

ADDITIONAL GUIDANCE MATERIAL

Gateway

dtf.vic.gov.au

Government's priority areas for market-led proposals

dtf.vic.gov.au

Investment Lifecycle and HVHR Guidelines

dtf.vic.gov.au

Major Projects Skills Guarantee

jobs.vic.gov.au/about-jobs-victoria/major-projects-skills-guarantee

Market-led Proposals Guideline

dtf.vic.gov.au

Market-led proposals information

dtf.vic.gov.au

Market-led proposals project summary template

dtf.vic.gov.au

Office of Housing

housing.vic.gov.au

Value Capture and Creation Framework

dpc.vic.gov.au/index.php/news-publications/value-creation-and-capture-framework

Victorian Government Purchasing Board

procurement.vic.gov.au/Home

Victorian Government Tenders

tenders.vic.gov.au

Victorian Industry Participation Policy

economicdevelopment.vic.gov.au/victorian-industry-participation-policy

The Secretary
Department of Treasury
and Finance
1 Treasury Place
Melbourne, Victoria, 3002
Telephone: +61 3 9651 5111
Fax: +61 3 9651 2062
Website: dtf.vic.gov.au

Authorised by the
Victorian Government
1 Treasury Place,
Melbourne, 3002

Printed by Doculink,
Port Melbourne

© State of Victoria
(Department of Treasury and
Finance) 2017

You are free to re-use this work
under a Creative Commons
Attribution 4.0 licence, provided
you credit the State of Victoria
(Department of Treasury and
Finance) as author, indicate
if changes were made and
comply with the other licence
terms. The licence does not
apply to any branding, including
Government logos.

Copyright queries may
be directed to
IPpolicy@dtf.vic.gov.au.



Published November 2017

ISBN 978-1-925551-71-6 (Print)
ISBN 978-1-925551-72-3 (pdf/
online)

